

§210.15

(c) Except where a negative reserve balance exists, a separate and distinct phonorecord reserve shall be established for each month during which the compulsory licensee relinquishes phonorecords from possession for purposes of sale accompanied by a privilege of return, as described in §210.12(g)(3). In accordance with §210.12(g)(3)(ii), any phonorecord remaining in a particular phonorecord reserve nine months from the month in which the particular reserve was established shall be considered “distributed”; at that point, the particular monthly phonorecord reserve shall lapse and royalties for the phonorecords remaining in it shall be paid as provided in §210.16(d)(2).

(d) Where a negative reserve balance exists, the aggregate total of phonorecords comprising it shall be accumulated into a single balance rather than being separated into distinct monthly balances. Following the establishment of a negative reserve balance, any phonorecords relinquished from possession by the compulsory licensee for purposes of sale or otherwise, shall be credited against such negative balance, and the negative reserve balance shall be reduced accordingly. Digital phonorecord deliveries may be credited against such negative reserve balance, but only if such digital phonorecord deliveries have the same royalty rate as physical phonorecords under part 385 of this title. The nine-month limit provided in §210.12(g)(3)(ii) shall have no effect upon a negative reserve balance; where a negative reserve balance exists, relinquishment from possession of a phonorecord by the compulsory licensee at any time shall be used to reduce such balance, and such phonorecord shall not be considered “distributed” within the meaning of §210.12(g).

(e) In no case shall a phonorecord reserve be established while a negative reserve balance is in existence; conversely, in no case shall a negative reserve balance be established before all available phonorecord reserves have been eliminated.

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§210.15 Situations in which a compulsory licensee is barred from maintaining reserves.

Notwithstanding any other provisions of this section, in any case where, within three years before the phonorecord was relinquished from possession, the compulsory licensee has had final judgment entered against it for failure to pay royalties for the reproduction of copyrighted music on phonorecords, or within such period has been definitively found in any proceeding involving bankruptcy, insolvency, receivership, assignment for the benefit of creditors, or similar action, to have failed to pay such royalties, that compulsory licensee shall be considered to have “Permanently parted with possession” of a phonorecord made under the license at the time at which that compulsory licensee actually first parts with possession. For these purposes the compulsory licensee shall include:

(a) In the case of any corporation, the corporation or any director, officer, or beneficial owner of twenty-five percent (25%) or more of the outstanding securities of the corporation;

(b) In all other cases, any entity or individual owning a beneficial interest of twenty-five percent (25%) or more in the entity exercising the compulsory license.

§210.16 Monthly statements of account.

(a) *Forms.* The Copyright Office does not provide printed forms for the use of persons serving Monthly Statements of Account.

(b) *General content.* A Monthly Statement of Account shall be clearly and prominently identified as a “Monthly Statement of Account Under Compulsory License for Making and Distributing Phonorecords,” and shall include a clear statement of the following information:

(1) The period (month and year) covered by the Monthly Statement.

(2) The full legal name of the compulsory licensee, together with all fictitious or assumed names used by such person or entity for the purpose of conducting the business of making and distributing phonorecords.

(3) The full address, including a specific number and street name or rural route, of the place of business of the compulsory licensee. A post office box or similar designation will not be sufficient for this purpose, except where it is the only address that can be used in that geographic location.

(4) For each nondramatic musical work that is owned by the same copyright owner being served with the Monthly Statement and that is embodied in phonorecords covered by the compulsory license, a detailed statement of all of the information called for in paragraph (c) of this section.

(5) The total royalty payable to the relevant copyright owner for the month covered by the Monthly Statement, computed in accordance with the requirements of this section and the formula specified in paragraph (d) of this section, including detailed information regarding how the royalty was computed.

(6) The amount of late fees, if applicable, included in the payment associated with the Monthly Statement.

(7) In any case where the compulsory licensee falls within the provisions of § 210.15, a clear description of the action or proceeding involved, including the date of the final judgment or definitive finding described in that section.

(8) Detailed instructions on how to request records of any promotional uses of the copyright owner's works that are required to be maintained or provided under § 385.14 or § 385.24 of this title, or other applicable provision, including, where applicable, records required to be maintained or provided by any third parties that were authorized by the compulsory licensee to engage in promotional uses during any part of the month. If this information is provided, Monthly Statements need not reflect phonorecords subject to the promotional royalty rate provided in § 385.14 or § 385.24 of this title, or any similar promotional royalty rate of zero that may be provided in part 385 of this title.

(c) *Specific content of monthly statements—(1) Accounting of phonorecords subject to a cents rate royalty structure.* The information called for by paragraph (b)(4) of this section shall, with respect to each nondramatic musical

work as to which the compulsory licensee has made and distributed phonorecords subject to part 385, subpart A of this title or any other provisions requiring computation of applicable royalties on a cents-per-unit basis, include a separate listing of each of the following items of information:

(i) The number of phonorecords made during the month covered by the Monthly Statement.

(ii) The number of phonorecords that, during the month covered by the Monthly Statement and regardless of when made, were either:

(A) Relinquished from possession for purposes other than sale;

(B) Relinquished from possession for purposes of sale without any privilege of returning unsold phonorecords for credit or exchange;

(C) Relinquished from possession for purposes of sale accompanied by a privilege of returning unsold phonorecords for credit or exchange;

(D) Returned to the compulsory licensee for credit or exchange; or

(E) Placed in a phonorecord reserve (except that if a negative reserve balance exists give either the number of phonorecords added to the negative reserve balance, or the number of phonorecords relinquished from possession that have been used to reduce the negative reserve balance).

(iii) The number of phonorecords, regardless of when made, that were relinquished from possession during a month earlier than the month covered by the Monthly Statement but that, during the month covered by the Monthly Statement either have had revenue from their sale "recognized" under § 210.12(g)(3)(i), or were comprised in a phonorecord reserve that lapsed after nine months under § 210.12(g)(3)(ii).

(iv) The per unit statutory royalty rate applicable to the relevant configuration; and

(v) The total royalty payable for the month covered by the Monthly Statement (i.e., the result in paragraph (d)(2)(v) of this section) for the item described by the set of information called for, and broken down as required, by paragraph (c)(1) of this section.

(vi) The phonorecord identification information required by paragraph (c)(3) of this section.

(2) *Accounting of phonorecords subject to a percentage rate royalty structure.* The information called for by paragraph (b)(4) of this section shall, with respect to each nondramatic musical work as to which the compulsory licensee has made and distributed phonorecords subject to part 385, subparts B or C of this title, or any other provisions requiring computation of applicable royalties on a percentage-rate basis, include a detailed and step-by-step accounting of the calculation of royalties under §385.12, §385.22, or other provisions of part 385 of this title as applicable, sufficient to allow the copyright owner to assess the manner in which the licensee determined the royalty owed and the accuracy of the royalty calculations, including but not limited to the following information:

(i) The number of plays, constructive plays, or other payable units, of the relevant sound recording for the month covered by the Monthly Statement for the relevant offering.

(ii) The total royalty payable for the month for the item described by the set of information called for, and broken down as required, by paragraph (c)(3) of this section (*i.e.*, the per-work royalty allocation for the relevant sound recording and offering).

(iii) The phonorecord identification information required by paragraph (c)(3) of this section.

(3) *Identification of phonorecords in monthly statements.* The information required by this paragraph shall include, and if necessary shall be broken down to identify separately, the following:

(i) The title of the nondramatic musical work subject to compulsory license.

(ii) A reference number or code identifying the relevant Notice of Intention, if the compulsory licensee chose to include such a number or code on its relevant Notice of Intention for the compulsory license.

(iii) The International Standard Recording Code (ISRC) associated with the relevant sound recording, if known, and at least one of the following, as applicable and available for tracking sales and/or usage:

(A) The catalog number or numbers and label name or names, associated with the phonorecords;

(B) The Universal Product Code (UPC) or similar code used on or associated with the phonorecords; or

(C) The sound recording identification number assigned by the compulsory licensee or a third-party distributor to the relevant sound recording.

(iv) The names of the principal recording artist or group engaged in rendering the performances fixed on the phonorecords.

(v) The playing time of the relevant sound recording, except that playing time is not required in the case of ringtones or licensed activity to which no overtime adjustment is applicable.

(vi) If the compulsory licensee chooses to allocate its payment between co-owners of the copyright in the nondramatic musical work, as described in paragraph (g)(1) of this section, and thus pays the copyright owner (or agent) receiving the statement less than one hundred percent of the applicable royalty, the percentage share paid.

(vii) The names of the writer or writers of the nondramatic musical work, or the International Standard Name Identifiers (ISNIs) or other unique identifier of the writer or writers, if known.

(viii) The International Standard Musical Work Code (ISWC) or other unique identifier for the nondramatic musical work, if known.

(ix) Identification of the relevant phonorecord configuration (for example: compact disc, permanent digital download, ringtone) or offering (for example: limited download, music bundle) for which the royalty was calculated, including, if applicable and except for physical phonorecords, the name of the third-party distributor of the configuration or offering.

(d) *Royalty payment and accounting—*
(1) *In general.* The total royalty called for by paragraph (b)(5) of this section shall be computed so as to include every phonorecord “distributed” during the month covered by the Monthly Statement.

(2) *Phonorecords subject to a cents rate royalty structure.* For phonorecords subject to part 385, subpart A of this title, or any other applicable royalties computed on a cents-per-unit basis, the amount of the royalty payment shall be calculated as follows:

(i) *Step 1: Compute the number of phonorecords shipped for sale with a privilege of return.* This is the total of phonorecords that, during the month covered by the Monthly Statement, were relinquished from possession by the compulsory licensee, accompanied by the privilege of returning unsold phonorecords to the compulsory licensee for credit or exchange. This total does not include:

(A) Any phonorecords relinquished from possession by the compulsory licensee for purposes of sale without the privilege of return; and

(B) Any phonorecords relinquished from possession for purposes other than sale.

(ii) *Step 2: Subtract the number of phonorecords reserved.* This involves deducting, from the subtotal arrived at in Step 1, the number of phonorecords that have been placed in the phonorecord reserve for the month covered by the Monthly Statement. The number of phonorecords reserved is determined by multiplying the subtotal from Step 1 by the percentage reserve level established under GAAP. This step should be skipped by a compulsory licensee barred from maintaining reserves under §210.15.

(iii) *Step 3: Add the total of all phonorecords that were shipped during the month and were not counted in Step 1.* This total is the sum of two figures:

(A) The number of phonorecords that, during the month covered by the Monthly Statement, were relinquished from possession by the compulsory licensee for purposes of sale, without the privilege of returning unsold phonorecords to the compulsory licensee for credit or exchange; and

(B) The number of phonorecords relinquished from possession by the compulsory licensee, during the month covered by the Monthly Statement, for purposes other than sale.

(iv) *Step 4: Make any necessary adjustments for sales revenue "recognized," lapsed reserves, or reduction of negative*

reserve balance during the month. If necessary, this step involves adding to or subtracting from the subtotal arrived at in Step 3 on the basis of three possible types of adjustments:

(A) *Sales revenue "recognized."* If, in the month covered by the Monthly Statement, the compulsory licensee "recognized" revenue from the sale of phonorecords that had been relinquished from possession in an earlier month, the number of such phonorecords is added to the Step 3 subtotal.

(B) *Lapsed reserves.* If, in the month covered by the Monthly Statement, there are any phonorecords remaining in the phonorecord reserve for the ninth previous month (that is, any phonorecord reserves from the ninth previous month that have not been offset under FOFI, the first-out-first-in accounting convention, by actual returns during the intervening months), the reserve lapses and the number of phonorecords in it is added to the Step 3 subtotal.

(C) *Reduction of negative reserve balance.* If, in the month covered by the Monthly Statement, the aggregate reserve balance for all previous months is a negative amount, the number of phonorecords relinquished from possession by the compulsory licensee during that month and used to reduce the negative reserve balance is subtracted from the Step 3 subtotal.

(v) *Step 5: Multiply by the statutory royalty rate.* The total monthly royalty payment is obtained by multiplying the subtotal from Step 3, as adjusted if necessary by Step 4, by the statutory royalty rate set forth in §385.3 or other provisions of part 385 of this title as applicable.

(3) *Phonorecords subject to a percentage rate royalty structure.* For phonorecords subject to part 385, subparts B or C of this title, or any other applicable royalties computed on a percentage-rate basis, the amount of the royalty payment shall be calculated as provided in §385.12, §385.22, or other provisions of part 385 of this title as applicable. The calculations shall be made in good faith and on the basis of the best knowledge, information, and belief of the licensee at the time payment is

due, and subject to the additional accounting and certification requirements of 17 U.S.C. 115(c)(5) and this section. The following additional provisions shall also apply:

(i) A licensee may, in cases where the final public performance royalty has not yet been determined, compute the public performance royalty component based on the interim public performance royalty rate, if established; or alternatively, on a reasonable estimation of the expected royalties to be paid in accordance with GAAP. Royalty payments based on anticipated payments or interim public performance royalty rates must be reconciled on the Annual Statement of Account, or by complying with §210.17(d)(2)(iii) governing Amended Annual Statements of Account.

(ii) When calculating the per-work royalty allocation for each work, as described in §385.12(b)(4), §385.22(b)(3), or any similar provisions of part 385 of this title as applicable, an actual or constructive per-play allocation is to be calculated to at least the hundredth of a cent (*i.e.*, to at least four decimal places).

(e) *Clear statements.* The information required by paragraphs (b) and (c) of this section requires intelligible, legible, and unambiguous statements in the Monthly Statements of Account without incorporation of facts or information contained in other documents or records.

(f) *Certification.* (1) Each Monthly Statement of Account shall be accompanied by:

(i) The printed or typewritten name of the person who is signing and certifying the Monthly Statement of Account.

(ii) A signature, which in the case of a compulsory licensee that is a corporation or partnership, shall be the signature of a duly authorized officer of the corporation or of a partner.

(iii) The date of signature and certification.

(iv) If the compulsory licensee is a corporation or partnership, the title or official position held in the partnership or corporation by the person who is signing and certifying the Monthly Statement of Account.

(v) One of the following statements:

(A) I certify that (1) I am duly authorized to sign this Monthly Statement of Account on behalf of the compulsory licensee; (2) I have examined this Monthly Statement of Account; and (3) all statements of fact contained herein are true, complete, and correct to the best of my knowledge, information, and belief, and are made in good faith; or

(B) I certify that (1) I am duly authorized to sign this Monthly Statement of Account on behalf of the compulsory licensee, (2) I have prepared or supervised the preparation of the data used by the compulsory licensee and/or its agent to generate this Monthly Statement of Account, (3) such data is true, complete, and correct to the best of my knowledge, information, and belief, and was prepared in good faith, and (4) this Monthly Statement of Account was prepared by the compulsory licensee and/or its agent using processes and internal controls that were subject to an examination, during the past year, by a licensed Certified Public Accountant in accordance with the attestation standards established by the American Institute of Certified Public Accountants, the opinion of whom was that the processes and internal controls were suitably designed to generate monthly statements that accurately reflect, in all material respects, the compulsory licensee's usage of musical works, the statutory royalties applicable thereto, and any other data that is necessary for the proper calculation of the statutory royalties in accordance with 17 U.S.C. 115 and applicable regulations.

(2) If the Monthly Statement of Account is served by mail or by reputable courier service, certification of the Monthly Statement of Account by the compulsory licensee shall be made by handwritten signature. If the Monthly Statement of Account is served electronically, certification of the Monthly Statement of Account by the compulsory licensee shall be made by electronic signature as defined in section 7006(5) of title 15 of the United States Code.

(g) *Service.* (1) The service of a Monthly Statement of Account on a copyright owner under this subpart may be accomplished by means of service on

either the copyright owner or an agent of the copyright owner with authority to receive Statements of Account on behalf of the copyright owner. In the case where the work has more than one copyright owner, the service of a Statement of Account on at least one co-owner or upon an agent of at least one of the co-owners shall be sufficient with respect to all co-owners. The compulsory licensee may choose to allocate its payment between co-owners. In such a case the compulsory licensee shall provide each co-owner (or its agent) a Monthly Statement reflecting the percentage share paid to that co-owner. Each Monthly Statement of Account shall be served on the copyright owner or the agent to whom or which it is directed by mail, by reputable courier service, or by electronic delivery as set forth in paragraph (g)(2) of this section on or before the 20th day of the immediately succeeding month. The royalty payment for a month also shall be served on or before the 20th day of the immediately succeeding month. The Monthly Statement and payment may be sent together or separately, but if sent separately, the payment must include information reasonably sufficient to allow the payee to match the Monthly Statement to the payment. However, in the case where the compulsory licensee has served its Notice of Intention upon an agent of the copyright owner pursuant to §201.18 of this chapter, the compulsory licensee is not required to serve Monthly Statements of Account or make any royalty payments until the compulsory licensee receives from the agent with authority to receive the Notice of Intention notice of the name and address of the copyright owner or its agent upon whom the compulsory licensee shall serve Monthly Statements of Account and the monthly royalty fees. Upon receipt of this information, the compulsory licensee shall serve Monthly Statements of Account and all royalty fees covering the intervening period upon the person or entity identified by the agent with authority to receive the Notice of Intention by or before the 20th day of the month following receipt of the notification. It shall not be necessary to file a copy of the Monthly Statement in the Copyright Office.

(2) A copyright owner or authorized agent may send a licensee a demand that Monthly Statements of Account be submitted in a readily accessible electronic format consistent with prevailing industry practices applicable to comparable electronic delivery of comparable financial information.

(3) When a compulsory licensee receives a request to deliver or make available Monthly Statements of Account in electronic form, or a request to revert back to service by mail or reputable courier service, the compulsory licensee shall make such a change effective with the first accounting period ending at least 30 days after the compulsory licensee's receipt of the request and any information (such as a postal or email address, as the case may be) that is necessary for the compulsory licensee to make the change.

(4)(i) In any case where a Monthly Statement of Account is sent by mail or reputable courier service and the Monthly Statement of Account is returned to the sender because the copyright owner or agent is no longer located at that address or has refused to accept delivery, or the Monthly Statement of Account is sent by electronic mail and is undeliverable, or in any case where an address for the copyright owner is not known, the Monthly Statement of Account, together with any evidence of mailing or attempted delivery by courier service or electronic mail, may be filed in the Licensing Division of the Copyright Office. Any Monthly Statement of Account submitted for filing in the Copyright Office shall be accompanied by a brief statement of the reason why it was not served on the copyright owner. A written acknowledgment of receipt and filing will be provided to the sender.

(ii) The Copyright Office will not accept any royalty fees submitted with Monthly Statements of Account under this section.

(iii) Neither the filing of a Monthly Statement of Account in the Copyright Office, nor the failure to file such Monthly Statement, shall have effect other than that which may be attributed to it by a court of competent jurisdiction.

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(iv) No filing fee will be required in the case of Monthly Statements of Account submitted to the Copyright Office under this section. Upon request and payment of the fee specified in §201.3(e) of this chapter, a Certificate of Filing will be provided to the sender.

(5) Subject to paragraph (g)(6) of this section, a separate Monthly Statement of Account shall be served for each month during which there is any activity relevant to the payment of royalties under 17 U.S.C. 115. The Annual Statement of Account described in §210.17 of this subpart does not replace any Monthly Statement of Account.

(6) Royalties under 17 U.S.C. 115 shall not be considered payable, and no Monthly Statement of Account shall be required, until the compulsory licensee's cumulative unpaid royalties for the copyright owner equal at least one cent. Moreover, in any case in which the cumulative unpaid royalties under 17 U.S.C. 115 that would otherwise be payable by the compulsory licensee to the copyright owner are less than \$5, and the copyright owner has not notified the compulsory licensee in writing that it wishes to receive Monthly Statements of Account reflecting payments of less than \$5, the compulsory licensee may choose to defer the payment date for such royalties and provide no Monthly Statements of Account until the earlier of the time for rendering the Monthly Statement of Account for the month in which the compulsory licensee's cumulative unpaid royalties under section 17 U.S.C. 115 for the copyright owner exceed \$5 or the time for rendering the Annual Statement of Account, at which time the compulsory licensee may provide one statement and payment covering the entire period for which royalty payments were deferred.

(7) If the compulsory licensee is required, under applicable tax law and regulations, to make backup withholding from its payments required hereunder, the compulsory licensee shall indicate the amount of such withholding on the Monthly Statement or on or with the payment.

(8) If a Monthly Statement of Account is sent by certified mail or registered mail, a mailing receipt shall be sufficient to prove that service was

timely. If a Monthly Statement of Account is sent by a reputable courier, documentation from the courier showing the first date of attempted delivery shall be sufficient to prove that service was timely. If a Monthly Statement of Account or a link thereto is sent by electronic mail, a return receipt shall be sufficient to prove that service was timely. In the absence of the foregoing, the compulsory licensee shall bear the burden of proving that the Monthly Statement of Account was served in a timely manner.

[79 FR 56206, Sept. 18, 2014, as amended at 79 FR 60978, Oct. 9, 2014]

§210.17 Annual statements of account.

(a) *Forms.* The Copyright Office does not provide printed forms for the use of persons serving Annual Statements of Account.

(b) *Annual period.* Any Annual Statement of Account shall cover the full fiscal year of the compulsory licensee.

(c) *General content.* An Annual Statement of Account shall be clearly and prominently identified as an “Annual Statement of Account Under Compulsory License for Making and Distributing Phonorecords,” and shall include a clear statement of the following information:

(1) The fiscal year covered by the Annual Statement of Account.

(2) The full legal name of the compulsory licensee, together with all fictitious or assumed names used by such person or entity for the purpose of conducting the business of making and distributing phonorecords.

(3) If the compulsory licensee is a business organization, the name and title of the chief executive officer, managing partner, sole proprietor or other person similarly responsible for the management of such entity.

(4) The full address, including a specific number and street name or rural route, or the place of business of the compulsory licensee (a post office box or similar designation will not be sufficient for this purpose except where it is the only address that can be used in that geographic location).

(5) For each nondramatic musical work that is owned by the same copyright owner being served with the Annual Statement and that is embodied